

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 25, 2004

IN RE:

PETITION OF TENNESSEE AMERICAN WATER
COMPANY TO CHANGE AND INCREASE CERTAIN
RATES AND CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE OF RETURN
ON ITS PROPERTY USED AND USEFUL IN
FURNISHING WATER SERVICE TO ITS CUSTOMERS

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DOCKET NO.
03-00118

CONCURRENCE AND DISSENT OF DIRECTOR PAT MILLER

At a regularly scheduled Authority Conference held on August 4, 2003 a majority of the Directors of the voting panel assigned to this docket considered the *Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so as to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful in Furnishing Water Service to Its Customers* ("Petition") filed by Tennessee American Water Company ("TAWC"). At the conclusion of its deliberations a majority of the voting panel approved the *Petition*, finding that a rate increase is warranted and that TAWC is entitled to a rate increase of \$2,745,411. For the reasons set forth below, I respectfully dissent from this finding.

On January 11, 2000, the Authority, by a two-to-one vote, approved the tariff filed by TAWC that reflected the terms of a settlement agreement between TAWC and the City of Chattanooga (the "City"). The circumstances that precipitated the filing of this tariff and its approval are recounted in the *Order Approving Tariff* entered in Docket No. 99-00891. In approving TAWC's tariff in Docket No. 99-00891 the Authority ordered that the reduction in

annual fire hydrant charges to the City be borne by the stockholders of TAWC and not by the Company's ratepayers.¹ The Order approving TAWC's tariff filing recognized that the lost revenues would be imputed into TAWC's subsequent rate filings, thus reflecting the decision of the Company and its stockholders to absorb the contribution loss.² The Order specifically stated:

The Company's ratepayers shall not at any time, through increases in rates, fees, schedules or otherwise, bear any of the cost resulting from this Tariff filing by Tennessee-American Water Company to voluntarily reduce its fire hydrant charges to the City of Chattanooga.³

Paragraph 2 of the ordering clauses required the following:

2. The lost contribution to Tennessee-American Water Company resulting from the reduction in fire hydrant charges along with any expenses incurred as a result of the underlying litigation with the City of Chattanooga shall be borne, in full, by the stockholders of Tennessee American Water Company;

The Authority's Order became final after no party or person sought reconsideration or appeal.

While I am somewhat sympathetic to the dilemma faced by TAWC in filing the present rate case, the following facts remain undisputed: TAWC was faced with condemnation by the City in 1999; in an effort to fend off condemnation, TAWC entered into an agreement with the City to reduce the rates TAWC charged the City for inspection and maintenance of fire hydrants; the TRA approved this agreement at the request of TAWC and the City; and the TRA's Order approving the reduction in the rates TAWC charged the City for inspection and maintenance of fire hydrants stated that the loss contribution to TAWC resulting from the reduction in the fire hydrant charges, along with the expenses incurred as a result of the underlying litigation with the City, shall be borne in full by the stockholders of TAWC. The TRA's Order also stated that the Company's ratepayers shall not, at any time through increases in rates, fees, schedules, or

¹ See *In re Tariff Filing to Reduce Fire Hydrant Annual Charges as Part of a Settlement Agreement Between the City of Chattanooga and Tennessee-American Water Company*, Docket No. 99-00891, *Order Approving Tariff*, p. 5 (September 26, 2000) (hereinafter *Order Approving Tariff*).

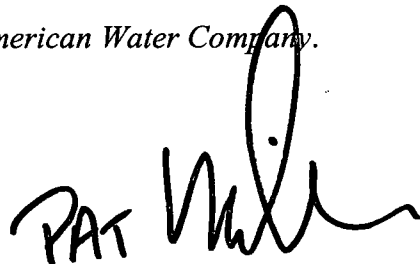
² *Order Approving Tariff*, p. 3, n.6

³ *Id.* at 5.

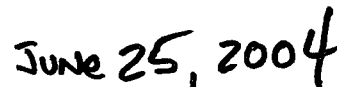
otherwise, bear any of the costs resulting from tariff filings by TAWC to voluntarily reduce its fire hydrant rates to the City. TAWC did not ask for reconsideration of the TRA's Order nor did it file an appeal.

Agreements like the one between TAWC and the City in Docket No. 99-00891 make poor public policy. Fire protection is important and the Authority can not deprive a utility of a fair rate of return on an asset which is used and useful in the provision of the utility's services. However, I think it is clear that a privately-owned utility can voluntarily enter into an agreement to forego a fair rate of return on its assets which are otherwise used and useful in the provision of the Company's services. TAWC committed to the Authority that it would bear the costs of that voluntary agreement, its tariff was approved on that basis and TAWC should be held to its commitment.

For the foregoing reasons, I respectfully dissent from the majority's decisions and find that TAWC's cost of service should be adjusted to remove the \$1.1 million related to the agreement with the City of Chattanooga to reduce the rates TAWC charged the City of Chattanooga for inspection and maintenance of fire hydrants and that TAWC should be granted a revenue increase of \$1,617,447.00. I concur with the majority in the approval of the rate design implementing the increased rates as reflected in the *Final Order Approving Rate Increase and Rate Design and Approving Rates Filed by Tennessee American Water Company*.

A handwritten signature in black ink, appearing to read "PAT Miller", written over a horizontal line.

Pat Miller, Director

A handwritten date "June 25, 2004" in black ink, written over a horizontal line.

Date